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<u>VIA U.S. MAIL & FACSIMILE (916) 327-2026</u>

Chairman Johnson and Commissioners
Fair Political Practices Commission
428 J Street, 8th Floor
Sacramento, CA 95814

Re: **January 15, 2009, Agenda Item #16: Regulations Affecting Ballot Measure Committees Controlled by Candidates for Elective State Office**

Dear Chairman Johnson and Commissioners:

This firm serves as counsel to Governor Schwarzenegger's California Dream Team ("CDT"). CDT is a nonprofit public benefit corporation regulated under the Political Reform Act as a general purpose ballot measure committee, formed to support and oppose California ballot measures, which is controlled by Governor Arnold Schwarzenegger.

We urge the Commission to consider amending the currently proposed version of Regulation 18521.5[1] before adoption. Although this version addresses some of the main concerns raised at the Commission's meeting in December,[2] it still raises a significant issue.

Our concern deals with the Commission's intent with regard to whether candidate-controlled ballot measure committees ("CCBMCs") would be allowed to raise and expend funds on grassroots lobbying, including communicating with constituents to urge support of or opposition to legislative proposals, under this latest version of Regulation 18521.5. At the Interested Persons' Meeting held on December 23, 2008, my colleague Fred Lowell suggested adding the following description to the list of permissible CCMBC activities: "any lobbying activities whatsoever, including but not limited to,

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[1]   All regulatory references are to Title 2 of the California Code of Regulations, and all references to "sections" are to Government Code statutes, unless otherwise indicated.

[2]   See my 12/9/08 comment letter submitted before the Commission's 12/11/08 meeting.

expenses regulated by Chapter 6 of the Political Reform Act, sections 86115 and 86116, and Regulations 18616 and 18616.4".
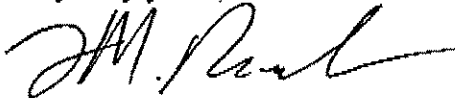
Because all persons have a First Amendment right to "petition the government for a redress of grievances" (i.e., lobby) under the U.S. Constitution, we strongly urge the Commission to include expenditures for lobbying activity in the explicit list of payments that may be made out of CCBMC funds. (See, e.g., *FPPC v. Superior Court* (1979) 25 Cal.3d 33, 46 [discussing lobbying as a constitutionally protected right].)

In California, ballot measures frequently begin as legislative proposals or opposition to legislative proposals. As the FPPC has explicitly acknowledged, a ballot measure committee may make expenditures of campaign funds to pay for legislative monitoring and advocacy services. (*Paquette* Advice Letter, No. I-06-208.) Such expenditures may include everything from the payment of a contract lobbyist's retainer to the funding of a newsletter containing periodic calls for political action on the part of its recipients. (See, e.g., *Paquette* Advice Letter, No. I-06-208; *Major* Advice Letter, No. A-00-269; *Olander* Advice Letter, No. A-92-211; *Brown* Advice Letter, No. I-90-412; *Frank* Advice Letter, No. I-89-692.)

It is not uncommon for political committees (both general and primarily-formed, controlled and not controlled) to expend funds on communications directed at ordinary citizens, urging them to, in turn, urge their representatives to support or oppose certain positions on proposed legislation or brewing policy issues that might or might not later take the form of ballot measures.

Because of the constitutionally protected nature of this type of urge-your-representative message and lobbying in general, payments made in connection with such activities should be listed explicitly in the proposed regulation as payments that may be made by a CCBMC.

Very truly yours,

Liane M. Randolph

cc: Scott Hallabrin, Esq. (FPPC General Counsel)
       Frederick K. Lowell, Esq.